

INNOMINATE CIVIL LAW CONTRACTS

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The object of the thesis is the study of general issues of the innominate contracts as well as their place and role in the modern Ukrainian law.

The question of the legal nature of innominate agreements in civil law is very relevant, since modern law must promote the development of market and property relations and not to restrict the manifestations of the legitimate initiative of the participants of legal relations.

Dynamism and complications of modern legal relations predetermine the emergence of new relationships that require contractual regulation. However, contractual constructions that should be applied for the mediation of such relations are not provided by the Civil Code of Ukraine.

To ensure the proper development of such relations and their functions within the legal field Part 1 of Art. 6 of the Civil Code of Ukraine stipulated the provision that the parties can conclude an agreement that is not foreseen by civil law, but is consistent with the general ambushes of the legislation.

Hence, the freedom of agreement is one of the most important principles of the civil legislation. It says that the parties shall be free to conclude an agreement, to select the counter agent and to determine the provisions of the agreement taking into consideration the requirements of the civil Code, other acts of civil legislation, customs of business turnover, requirements of rationality and justice.

Innominate contracts are such contracts, a model of which is not provided by the law. In such contracts the parties themselves should formulate the content of the agreement while they can use the analogy of the law and the general rules of binding law, as well as the analogy of law, based on common principles of civil law, the requirements of integrity, rationality and justice.

The existence of such contracts in contractual relations is a certain manifestation of the democratic nature and will of the subjects of these relations by giving to the parties more rights and opportunities to settle the relations at their own discretion without violating the legislation. The number of these contracts can not be counted for sure because there are plenty of them and new ones arise due to evolving needs of people and societies over time.

In the doctrine of civil law there are different views to the question of legal regulation of innominate agreements. According to R. B. Shyshka, "namelessness of the treaty do not mean that it is generally out of legal regulation and influence of law"[7, p.9]. Credibility of the opinion is substantiated. Detailed analysis of Art. 6 of the Civil Code of Ukraine certifies that the legal regulation of innominate agreements is subordinated to the general basics of civil law directly defined in Art. 3. These principles are the starting point to be addressed when signing in nominate

contracts. So, for the regulation of such contracts one should apply an analogy of law.

V. O. Goryev notes that “the choice of the innominate agreement means the development of an unknown treaty in a civil law field. Therefore, the parties must know with certainty what provisions of civil law and in what sequence to use if they make such an agreement” [5, p.14].

Innominate contracts should be distinguished from mixed agreements. The difference lies in the fact that innominate contracts form a completely new kind, while mixed contracts are formed by mixing both named and innominate agreements. The mixed contract is secondary to innominate. However, it is very difficult to make this distinction in practice.

Indeed, as mentioned above, innominate contracts take a very important place in the modern law of Ukraine. Recognition of their existence and protection by the state is one of the manifestations of the significance of this type of treaties. Not all contractual relations that have new qualities, require the creation of a new institution. Their regulation may find expression in the conclusion of an innominate contract. This enables parties to enter into contracts in those areas of activity in which there are no statutory norms for the conclusion of such agreements.

References:

1. Конституція України: Закон від 28.06.2006 р. / Верховна Рада України // Відомості Верховної Ради. – 1996. – № 30. – Ст. 141.
2. Цивільний кодекс України: текст прийнятий Верховною Радою України 16 січня 2003 р. із змінами і доп. Станом на 12 травня 2008 р. / Міністерство юстиції України. – Офіц. вид. – Київ : ІнЮре, 2008. – 480 с.
3. Мигалок Л. Класифікація непойменованих договорів / Л. Мигалок // Підприємництво, господарство, право. – 2012. – № 2.
4. Мигалюк Л. Правове регулювання непойменованих договорів в цивільному праві України / Л. Мигалюк // Підприємництво, господарство, право. – 2012. – № 2. – С. 96 – 100.
5. Горєв В. О. Свобода договору як загальна засада цивільного законодавства України: автореф. дис. на здобуття наук. Ступеня канд. юрид. наук : спец. 12.00.03 «Цивільне право; цивільний процес; сімейне право; міжнародне приватне право» / В. О. Горєв. – Київ, 2007. – 22 с.
6. Лідовець Р. А. Змішані договори в цивільному праві України : автореф. дис. на здобуття наук. ступеня канд. юрид. наук : спец. 12.00.03 «Цивільне право; цивільний процес; сімейне право; міжнародне приватне право» // Р. А. Лідовець. – Львів, 2005. – 20 с.
7. Поєднання публічно-правових та приватно-правових механізмів регулювання господарських відносин: матеріали Всеукраїнської науково-практичної конференції, 19–30 жовтня 2007 р., м. Івано-Франківськ. – Івано-Франківськ, 2007. – 319 с.
8. Українсько-англійський словник правничої термінології / [уклад. Л. В. Мисик]. – Київ, 1999. – 523 с.